

ASSURANCES AND THE ROLE OF CERP:

Excerpts from the Governor's Commission for a Sustainable South Florida (GCSSF)

1. [P]ast water management activities in South Florida, geared predominantly toward satisfying urban and agricultural demands at the expense of the natural environment, have resulted in environmental devastation and an unsustainable future for South Florida. As a result, the CERP is intended to "level the playing field," creating a new balance to satisfy the needs of the natural system, while also providing for urban and agricultural needs. Per Concept 6 of the GCSSF addressing Water Supply and Flood Protection for Urban and Agricultural Areas, "It is the goal of the Commission to **maintain existing levels of water supply and flood protection and, where consistent with restoration goals, to balance future flood protection and water supply.**"¹
2. The underlying concern to be addressed by assurances to existing legal users first promoted by the GCSSF and codified in WRDA 2000 ("Savings Clause") is the following: "that a water user would be forced to rely on a new water storage technology before that technology is capable of fully providing a water supply source, and that the user would thereby experience a loss of their current legal water supply level of service."² (E.g., reliance on ASR in the Lake Okeechobee region). "**Assurances are needed for existing legal users during the period of plan implementation.**"³
3. According to the GCSSF, "the SFWMD should not transfer existing legal water users from their present sources of supply of water to alternative sources until the new sources can reliably supply the existing legal uses."⁴ "It is the Commission's intent that **existing legal water users be protected from the potential loss of existing levels of service resulting from the implementation of the Restudy, to the extent permitted by law.**"⁵
4. "**[A]ssurances are needed that, once restored, South Florida's natural environment will not again be negatively impacted by water management activities.**"⁶
5. "The SFWMD should use the tools in Chapter 373 F.S. to protect water supplies necessary for a sustainable Everglades ecosystem. **This should include early planning and adoption of reservations.** These reservations for the natural system should be conditioned on providing a replacement water source for existing legal users which are consistent with the public interest. Such replacement sources should be determined to be on line and dependable before users are required to transfer."⁷
6. "The SFWMD and the Corps should **design the implementation plan so as to maintain the balance of benefits across all users and the natural system**, to the extent permitted by law, and to assure a sustainable South Florida ecosystem, including the natural systems existing in the urban areas where consistent with restoration goals."⁸ The implementation plan was designed with this balance, and resulted in the initial authorization package contained in WRDA 2000.
7. "The [CERP] Implementation Plan established "red-flag" criteria which designated hydrologic performance worse than the 2010 base scenario. The Commission recommends that a similar type of assessment be conducted to evaluate performance relative to ecological restoration goals, establishing "red-flag" criteria as defined by quantitative and measurable interim goals."⁹

¹ Governor's Commission for a Sustainable South Florida, A Conceptual Plan for the C&SF Project Restudy (August 28, 1996), at 38.

² Governor's Commission for a Sustainable South Florida, An Interim Report on the C&SF Project Restudy (August 11, 1998), at 24.

³ Governor's Commission for a Sustainable South Florida, Restudy Plan Report (January 20, 1999), at 53.

⁴ *Supra* note 2. (Recommendation 25.)

⁵ *Id.*

⁶ *Supra* note 3.

⁷ *Id.* at 61.

⁸ *Id.* at 56 (Recommendation 41.)

⁹ *Id.*

8. "The Implementation Plan should establish or outline a process by which interim goals will be established to provide a means by which the restoration success of the Comprehensive Plan may be evaluated throughout the implementation process. These interim goals should be expressed in terms of target restoration standards and should be reached by specific points in the implementation process. Restoration standards should be quantitative and measurable."¹⁰
9. "Chapter 373.0361(2)(a), Florida Statutes requires water management districts to develop regional water supply plans which include a water supply development component that provides a level of certainty planning goal for meeting existing and future reasonable beneficial needs based on a 1-in-10 year drought event. This **planning goal is a state law requirement, and thus a water management district obligation. It does not impose a legal obligation on the Restudy.** However, this goal should be addressed by the Restudy to the extent possible because the SFWMD is the local sponsor of the Restudy."¹¹

"The **SFWMD may sponsor a Restudy that does not meet the 1-in-10 year level-of-certainty planning goal;** however, where this cannot be achieved, the SFWMD should acknowledge its obligation under state law to: a) take the lead in identifying, implementing and securing funding for water resource development projects; and b) identify options in the regional water supply plans to meet the 1-in-10 level-of-certainty planning goal."¹²

Note on Shared Adversity:

There seems to be some confusion regarding the concept of "shared adversity." This consensus concept of shared adversity deals with leveling the playing field to create a new balance to satisfy the needs of the natural system, while also providing for urban and agricultural needs. Previous water management practices resulted in the natural system taking the brunt of all flood and drought adversity. The concept of shared adversity encourages fair distribution of adverse impacts between human and natural systems.

In its Initial Report, the GCSSF set as an objective the "incorporat[ion] into all planning and policy decisions the concept of "**shared adversity**" from the impacts of floodwaters by reducing the extent of damage from flooding to both the human and natural system to the greatest extent possible for all components of the South Florida ecosystem."¹³

In the Interim Report, the GCSSF recommended that, "In the event that there is a shortage or excess in water for existing storage, all systems should **share in the adversity** resulting from the imbalance in storage. However, the Restudy should provide sufficient facilities that protect natural systems such that natural systems will not have to accept a water storage adversity in either wet or dry periods that would cause significant harm to native vegetative or faunal communities, nor should water user groups have to accept adversity that significantly impacts human health and safety."¹⁴

"The Restudy must employ enough additional storage to capture virtually all excess water currently released to tide, in order to ensure adequate water supplies for all **existing legal users** while protecting the health of South Florida's Everglades and other wetlands, estuaries and marine systems."¹⁵

¹⁰ Governor's Commission for a Sustainable South Florida, Report on the January 25, 1999 Draft Implementation Plan of the C&SF Project Restudy (March 3, 1999), at 16.

¹¹ *Supra* note 2 at 27.

¹² *Id.*

¹³ Governor's Commission for a Sustainable South Florida, Initial Report (October 1, 1995), at 60.

¹⁴ *Supra* note 2, at 7.

¹⁵ *Supra* note 2, at 2